## REMARKS

Without acquiescing to the propriety of the rejections in the Office Action dated August 27, 2003, claim 12 has been added. Entry of these amendments, reconsideration of the application, and allowance of all claims pending herein is respectfully requested in view of the remarks below. Claims 1-12 are pending.

Initially, applicant gratefully acknowledges the allowance of claims 1-5 and 8-11.

**Rejections Under § 102:**

Claims 6 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kolesa et al. (U.S. Patent No. 5,836,960). Specifically, Kolesa et al. is alleged to disclose a method of ratcheting the closure of a pair of jaws comprising providing a pivotally mounted actuator handle (34) operatively coupled to a pair of jaws (30,32), a drive head having teeth formed thereon (140), and providing a pawl positioned for engagement with the teeth. Applicant respectfully traverses this rejection.

Amended claim 6 recites a method of ratcheting the closure of a pair of jaws of an endoscopic grasping tool surgical instrument which includes providing a pivotally mounted actuator handle operatively coupled to the jaws. The handle has a drive head which moves distally to affect jaw closure and the drive head has teeth formed thereon. A pawl is provided which is positioned for engagement with teeth so as to prevent proximal movement of the drive head after it has moved distally.

Kolesa et al. discloses a surgical instrument which includes a rotatable collar 122 (FIG. 3A) having a ratchet 140. A pivoting handle 16 is extendable to cause a camming surface 138 to abut a second straight section 137 of a spring member 134. A first straight section 135 of spring member 134 has teeth 139 which engage ratchet 140 to restrict angular displacement of rotatable collar 122 to lock an endoscopic portion in a particular position as described in columns 3 and 4. Handle 16 may also cause progressive closure of grasper jaws 30, 32. A fixed handle 14 includes complimentary sections 34 and 36.

Complimentary section 34 of fixed handle 14 of Kolesa et al., which is alleged in the Office Action to be a pivotally mounted actuator handle, is not pivotally mounted nor does it actuate. In particular, because handle 14 is fixed, it cannot be pivotally mounted. Further, it is not able to actuate, since as noted, it is fixed, and therefore it does not put anything "into mechanical action or motion" as "actuate" is defined in Merriam Webster's dictionary (see www.m-w.com and attached page).

Further, even if handle 14 was considered to be a pivotally mounted actuator handle despite the fact that it does not pivot, handle 14 does not disclose a drive head which moves distally to affect jaw closure nor a drive head having teeth formed thereon. Ratchet 140 is received between complimentary portions 34 and 36 and spring 134 is slidably mounted between complimentary sections 34 and 36, but there is no disclosure of a drive head which annular ratchet 140 (alleged to be teeth in the Office Action) could be alleged to be mounted to nor does the Office Action identify such a drive head. Accordingly, there is no disclosure of a pawl positioned for engagement with teeth on such a drive head to prevent proximal movement of the drive head after it has moved distally.

Thus, because complimentary section 34 of fixed handle 14 is not a pivotally mounted actuator handle having a drive head which moves distally to affect jaw closure with the drive head having teeth formed thereon ,as alleged in the Office Action, Kolesa et al. does not identically disclose the features of claim 6 of the present application and this claim cannot be anticipated thereby.

Also, even if pivoting handle 16 in Kolesa et al. was alleged to be an actuator handle, handle 16 does not have a drive head which has teeth formed thereon and which is moved distally to affect jaw closure, as recited in claim 6. The Office Action alleges that the teeth on ratchet 140 comprise teeth on a drive head and appears to allege spring member 134 comprises a pawl to engage with such teeth. The alleged teeth in Kolesa et al. are not formed on a drive head of the handle, but instead such teeth are located on ratchet 140 utilized to prevent rotation of tool 28, as depicted in FIGS. 3-3A and described in column 4, lines 11-25. It is evident from these figures and the cited text that ratchet 140 is separate from handle 16 and thus could not be teeth located on a drive head thereof. Further, there is no disclosure in Kolesa et al. of a pawl which is positioned for engagement with teeth on such a drive head to prevent proximal movement of such a drive head after it has moved distally. Instead, handle 16 in Kolesa et al. abuts spring 134 which engages ratchet 140, but such handle does not include the alleged teeth thereon. Thus, the Kolesa et al. device cannot include a pawl which is positioned to engage such nonexistent teeth on handle 16, because the alleged teeth are separate from the handle and any alleged pawl would need to be configured to engage teeth on a drive head of the handle. Therefore, the features of claim 6 are not identically disclosed by Kolesa et al., and this claim cannot be anticipated thereby. Accordingly, claim 6 is believed to be allowable.

Also, claim 7 which depends from claim 6 is believed to be allowable for the same reasons as claim 6 and for the additional feature of a pawl comprised of two tines of unequal length so that each tine engages the teeth alternately with the other, as the head moves distally. The combination of ratchet 140 and spring member 134 in Kolsea et al. could not be considered to have tines of unequal length such that

each tine engages teeth of a drive head alternately with the other as the drive head moves distally. In particular, there is no description or depiction in Kolesa et al. of tines of unequal length, nor does the Office Action allege any such unequal length tines.

Therefore, because Kolsea et al. does not disclose tines of unequal length as recited in claim 7, this claim cannot be anticipated thereby. Therefore, claim 7 is believed to be allowable for the same reasons as claim 6 and for the additional feature of the unequal tines.

**New Claim:**

New claim 12 has been added which incorporates claims 6 and 7 except that it recites a method for ratcheting the closure of a pair of jaws of a surgical instrument instead of an endoscopic grasping tool surgical instrument. Claim 12 recites, inter alia, a pawl having two tines of unequal length so that each tine engages teeth of drive head alternately with the other, as the drive head moves distally. As stated above in claim 7, the feature of the unequal tines is not disclosed in Kolesa et al., and this claim is thereby believed not to be anticipated by Kolesa et al. and is believed to be allowable. Further, it is believed to be allowable for the same reasons as described for claim 6. Therefore, because the features of claim 12 are not identically disclosed by Kolesa et al., this claim cannot be anticipated thereby, and it is believed to be allowable.

*Docket No.: 1242.002A*

## CONCLUSION

It is believed that the application is in condition for allowance, and such action is respectfully requested.

If a telephone conference would be of assistance in advancing prosecution of the subject application, Applicant's undersigned attorney invites the Examiner to telephone him at the number provided.

***Respectfully submitted,***

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Dated: November 26 2003

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